

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9333 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

Hon'ble MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KARSANBHAI VESNABHAI BARIYA

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR MUKESH R SHAH for Petitioners

Mr. B.D.Desai, A.G.P. for the respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 08/12/98

ORAL JUDGEMENT

Rule. Mr. B.D.Desai, learned A.G.P. waives service of notice of Rule on behalf of the respondents. At the request of the learned counsel appearing for the parties, the petition is taken up for final hearing today.

2. By means of filing this petition under Article

226 of the Constitution of India, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, direction or order declaring that the acquisition proceedings numbered as Case No.97/93 initiated for Sankheda Distributory of Narmada Canal have lapsed. The petitioners have further prayed to quash and set aside the acquisition proceedings initiated with regard to land bearing block no. 121 situated in village Allahadpura, Taluka Sankheda, District Baroda.

3. The petitioners were the owners of land bearing block no.121 admeasuring 28 Are- 33 sq.mtrs. situated at village Allahadpura Taluka, Sankheda,district Baroda. The Executive Engineer, Narmada Project Construction, Dabhoi had proposed to the State Government to acquire the lands of village Allahadpura for the public purpose of construction of Sankheda Distributory of Narmada Canal. On receipt of the proposal necessary inquiries were made and the State Government was satisfied that the lands situated at village Allahadpura were likely to be needed for the said public purpose. Accordingly Notification under section 4 of the Land Acquisition Act 1894 ('the Act' for short) was issued which was published in official gazette on June 10,1993. By the said Notification, block no. 121 which belonged to the petitioners was also proposed to be acquired. The land owners were served with notices under section 4 of the Act. They had filed objections against the proposed acquisition. After taking into consideration the objection filed by the land owners, the Special Land Officer, Baroda had submitted his report to the State Government as contemplated by section 5-A (2) of the Act. The State Government had considered said report and was satisfied that the land mentioned in the Notification which was issued under section 4(1) of the Act were needed for the public purpose of the construction of Sankheda Distributory of Narmada Canal. Accordingly, declaration under section 6 of the Act was made which was published in the official gazette on November 22,1994. Said notification was published in the local newspaper known as "Yug Prabha" on January 2,1995 as well as in Hind daily on January 4,1995. Public notice of the substance of the said declaration was also given at the office of Mamlatdar on December 6,1996. The interested persons were thereafter served with a notices under section 9 of the Act for determination of compensation. The petitioners have averred that the Special Land Acquisition Officer made an award as contemplated by section 11 of the Act on July 31,1996 and August 21,1996 but the Award produced at Annexure D indicates that it was made on July 31,1996. In the present petition, the

petitioners have claimed that Special Land Acquisition Officer did not make an award under section 11 of the Act within a period of two years from the date of publication of the declaration under section 6 of the Act and therefore, the entire proceedings for the acquisition of the land should be treated as having lapsed. It is also claimed that the declaration under section 6 of the Act was not made before the expiry of one year from the date of publication of the Notification under section 4(1) of the Act and therefore, also the acquisition proceedings should be treated as having lapsed. Under the circumstances the petitioners have filed the present petition and claimed reliefs to which reference is made earlier.

4. Learned counsel for the petitioners submitted that declaration under section 6 of the Act was not made before the expiry of one year from the date of the publication of the Notification issued under section 4(1) of the Act and therefore, the petition should be entertained. It was emphasised that the Special Land Acquisition Officer failed to make the award under section 11 of the Act within a period of two years from the date of the publication of the declaration made under section 6 of the Act and therefore, the reliefs claimed in the petition should be granted.

5. Mr.B.D.,Desai, learned A.G.P. for the respondents submitted that the Notification issued under section 4 of the Act was published in Gujarat Samachar on April 22,1994; whereas the declaration under section 6 of the Act was published in Government gazette on January 5,1995 and therefore, it cannot be said that the declaration under section 6 of the Act was made after the expiry of one year from the date of publication of the Notification under section 4(1) of the Act. Learned A.G.P. pointed out that the substance of declaration made under section 6 of the Act was notified at the Panchayat Office on January 6,1996 as well as at the convenient place in the locality on January 6,1996 and therefore, the Land Acquisition proceedings cannot be treated as having lapsed, when the Special Land Acquisition Officer made an award under section 11 of the Act on July 31,1996.

6. We have heard the learned counsel for the parties. In our view there is no substance in any of the contentions urged on behalf of the petitioners and the petition cannot be entertained. The petitioners have produced award rendered by the Special Land Acquisition Officer, Baroda at Annexure-D to the petition. Said

award indicates that Notification under section 4(1) was published in the Government gazette on July 20,1994 and not on June 10,1993 as asserted by the petitioners in the petition. The award further shows that Notification was also published in Sandesh daily dated April 21,1994 as well as in Gujarat Samachar daily dated April 22,1994; whereas the substance of Notification was given at the office of Mamlatdar on October 11,1994 and also at Panchayat Office on the same day. Moreover the substance of the Notification was also notified at the site on October 10,1995. The award would indicate that the declaration under section 6 of the Act was published in Government gazette on January 5,1995. By now it is well settled that for the purpose of computing the period of one year as contemplated by section 6(1) , proviso (ii), first date of publication of declaration under section 6 of the Act is to be taken into account. If the first date of publication of declaration under section 6 of the Act is taken into account, it cannot be said that declaration under section 6 of the Act was made after expiry of one year from the date of publication of the Notification published under section 4(1) of the Act. Therefore, the petitioners cannot be granted any relief on the footing that declaration under section 6 of the Act was made after the expiry of one year from the date of publication of the Notification under section 4(1) of the Act. So far as the second submission is concerned, we notice that declaration under section 6 of the Act was notified at the office of Mamlatdar on January 4,1996; whereas it was notified at the site on January 6,1996. It is an admitted fact that Special Land Acquisition Officer has rendered the award on July 31,1996. Therefore, it can hardly be argued with success that Special Land Acquisition Officer did not make the award within a period of two years from the date of publication of the declaration under section 6 of the Act and therefore, the entire acquisition proceedings should be treated as having lapsed. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that there is no substance in the petition and the petition deserves to be dismissed.

7. For the foregoing reasons the petition fails and is dismissed. Rule is discharged with no order as to costs.